

IN THE MATTER OF: A request under Schedule 1 of the Resource Management Act 1991 to rezone land at Whareroa (being Proposed Plan Change 36 to the Taupo District Plan)

TO: **Taupo District Council**

APPLICANT: **The Proprietors of Hauhungaroa No. 6**

Rebuttal Evidence of **Joanne Patricia Lewis** for The Proprietors of Hauhungaroa No 6

1 INTRODUCTION

1.1 My name is Joanne Patricia Lewis.

1.2 My experience and qualifications are set out in my Evidence in Chief (Eic).

1.3 I confirm that I have read and undertake to adhere to the “Code of Conduct for Expert Witnesses” contained in the Environment Court Consolidated Practice Note (2014). I confirm that this rebuttal evidence is within my area of expertise except where I state otherwise, and that I have not omitted to consider material facts known to me that might alter or detract from the opinions I express in this evidence.

1.4 As a result of considering the rebuttal evidence of TDC, the evidence of submitters, and with the benefit of joint witness conferencing, further modifications are proposed to the plan provisions intended to be introduced. These further modifications are provided (Appendix 1) and explained in Section 2 of this rebuttal evidence.

1.5 Sections 3 and 4 responds to resource management related matters raised in the following rebuttal evidence filed for Taupo District Council:

- Mr Mourie (now adopted by Ms Campion)
- Mr Bonis

2 FURTHER MODIFICATIONS PROPOSED

2.1 Taking into account rebuttal evidence of the TDC, questions of the Hearing Panel, and the evidence of submitters, further consideration has been given to the Plan provisions proposed to be changed ie as set out in Appendix 1 of my Eic. These further modified provisions are at Appendix 1 to this rebuttal evidence both in “tracked changes” format and final word versions of the document.

2.2 Overall, and as outlined in more detail below, the main purpose of the further modifications is to introduce more clarity and certainty around the provision for public accessways and reserves, ecological effects, landscape and visual effects, and archaeological effects. Further, additional “Matters of Control” are proposed to apply to subdivision at the Whareroa North. These matters are explained below.

Provision for public accessways and reserves

2.3 The provision of public accessways and reserves as shown on the concept plan in Appendix 8 has been reconsidered with a view to further minimising vegetation removal from SNA062 (while still

ensuring an appropriate level of connectivity) and clarifying the location and status of proposed reserves. Accordingly, Appendix 8 (including the Whareroa North Concept Plan) has been amended as detailed below.

2.4 The Whareroa North Concept Plan has been amended as follows:

- All public accessways provided for as Local Purpose Reserve (Access) to vest in Taupo District Council;
- Walkway access through SNA062 is confined to that area between the access road and the SNA062 boundary immediately southeast of the first cul de sac (and the walkway connection to the access road is further north than previously due to topography);
- The land proposed to be Maori Reservation (Conservation) is identified as “PMR”. That land is the SNA and the area of land in the lower part of “the bowl” between the cul de sac heads except for that part of the land to be vested as Local Purpose Reserve (access).

2.5 As well as changes to the concept plan, elsewhere in Appendix 8:

- A CPTED assessment is to be undertaken as part of the subdivision design process and included with any application for subdivision consent. That is also included in the stated set of environmental outcomes required. [Appendix 8, Section 2(I), and Section 5]
- During subdivision design stage and in consultation with TDC staff, consideration is to be given to catering for recreational cyclists on the proposed pedestrian links between roads in the elevated development area (ie not that part of the accessway that passes through SNA062) and for these sections to be designed accordingly. [Appendix 8, Section 4 “Access”]
- Detailed design of the accessways (which responds to the location and purpose of the various sections of the accessway) will be agreed with relevant TDC staff as part of subdivision design process. [Appendix 8, Section 4 “Access”]
- Design and physical works of the accessways are subject to TDC approval prior to vesting. [Appendix 8, Section 4 “Access”]
- Apart from the off-road accessways, the access road is to also provide for safe, separated pedestrian movement. [Appendix 8, Section 4 “Access”].

Ecological effects

2.6 The Whareroa North Concept Plan has been amended as follows:

- Identification of the northeast vegetated area as “*Broadleaved forest / scrub*” (instead of “*Regenerated scrub*”) as agreed by the ecologists;

- Identifying that part of the “*Broadleaved forest / scrub*” where indigenous vegetation will remain (and be supplemented and protected).

2.7 As well as changes to the concept plan, other Appendix 8 changes are summarised below:

- New Schedule 1 (to Appendix 8) titled “Whareroa North Indigenous Planting Proposal” setting out the location and parameters of the proposed planting in relation to the purpose and location of the planting areas;
- In order to ensure that the extent of earthworks and vegetation clearance associated with the access road through OLA60 and SNA062 is minimized, the Stage 1 subdivision application is required to be supported by a report (jointly from ecologist/landscape architect/engineer) “*outlining how the proposed road design minimises physical intrusion into SNA062 and OLA60 while providing a safe and suitable road connection*”. [Appendix 8, Section 2(g)]
- in Section 2(h) about development in the “Broadleaved forest / scrub” area, deletion of the “*for example....*” wording, as the area of indigenous vegetation to be protected and supplemented is now shown on the concept plan;
- clarification that the dense buffer planting where residential lots adjoin SNA062 is to be a minimum width of 2 and predominantly flax. [Appendix 8, Section 2(i)]
- Requirement for an Ecological Management Plan as part of the Stage 1 subdivision application and detailing what that is required to address. [Appendix 8, Section 2(i)]
- Clarification that the areas of indigenous vegetation to be protected includes that shown in the “Broadleaved forest / scrub” area (and noting that proposed indigenous planting will supplement existing indigenous vegetation remaining there). [Appendix 8, Section 2(j)]
- In the “Preliminary Stage” the ecological assessments will include fauna surveys, and surveys to inform development of the proposed mitigation/offset package. [Appendix 8, Section 3 “Staging”].

Landscape and visual effects

2.8 As well as the following matters already referred to above, Appendix 8 has been amended to include a plan setting out maximum building heights for the residential development:

- additional planting areas shown on the Whareroa North Concept Plan;
- new Schedule 1 “Whareroa North Indigenous Planting Proposal” setting out requirements for the various areas to be planted with indigenous vegetation;
- CPTED assessment requirements;

- the Stage 1 subdivision application is required to be supported by a report (jointly from ecologist/landscape architect/engineer) *“outlining how the proposed road design minimises physical intrusion into SNA062 and OLA60 while providing a safe and suitable road connection”*.

Archaeological effects

- 2.9 Appendix 8 (Section 3 “Staging”) has been amended, as agreed in correspondence between the archaeologists, to incorporate the following wording regarding archaeological values:

“The preliminary stage archaeological field inspection will be undertaken in accordance with the report of Sian Keith Archaeologist Limited (Recommendations 2 and 3, Section 14, “Archaeological Assessment Whareroa North Private Plan Change”, April 2020). Advice Note: Any required Archaeological Authority pursuant to s44a Pouhere Taonga Act 2014 shall be obtained prior to commencement of any earthworks being undertaken in affected areas”.

Other matters – Appendix 8

- 2.10 Other amendments to Appendix 8 include:

- Clarification that residential lots will be connected to water and wastewater systems, and electricity and telecommunication networks;
- Reference to other potential legal mechanisms (apart from Consent Notices) to secure outcomes;
- Reference to engineering assessments being included in the Preliminary Stage;
- Clarification on the concept plan and in Section 4 (under heading “Access”) about final design of the access including alignment, grade, and cross-section;
- That the outcomes set out in section 5 “must” be achieved (previously “should”) and titled “Required” instead of “Anticipated” Environmental Outcomes;
- Minor formatting and drafting improvements.

Matters of Control

- 2.11 As a consequence of considering and responding to a written question from the Hearing Panel, it is proposed to expand the matters of control set out beneath TDP Subdivision Rule 4a.3.2 to enable management of a greater range of potential effects.

- 2.12 Currently there are matters of control (a) to (g) and it is proposed to insert:

(h) In the case of subdivision at Whareroa North, additional matters as set out in Section 5 of Appendix 8 (Whareroa North Outline Development Plan).

2.13 Section 5 of Appendix 8 accordingly includes the following additional matters of control in the case of subdivision at Whareroa North:

- *“Measures to avoid, remedy, mitigate, or offset potential effects on indigenous biodiversity;*
- *effects on landscape character and visual amenity;*
- *effects on natural character;*
- *protection of the quality of the waters of Lake Taupo and its tributaries including through stormwater and earthworks management;*
- *provision and design of reserve areas including for pedestrian and cycling access to and within the residential subdivision;*
- *application of Crime Prevention Through Environmental Design principles”.*

2.14 In my response to the Hearing Panel’s question I have addressed potential issues of scope. In summary, I consider that scope is provided through the submissions of C Harding and Others (submitter #6) and I Sutcliffe (submitter #9) to introduce these additional matters of control.

3 THE EVIDENCE OF MR MOURIE

3.1 The rebuttal evidence of Mr Mourie (as adopted by Ms Champion) raises the following matters that I respond to below:

- lack of certainty around provision for cycling and walking access;
- intention for vegetated land at southern bowl area to be Maori Reservation instead of reserve vested in TDC.

Provision for cycling and walking

3.2 Section 2 above introduces further modifications proposed to the Whareroa North Outline Development Plan (Appendix 8) including additional information and clarification about provision for cycling and walking and including about detailed design, shared paths, application of CPTED principles, nature of proposed legal mechanism, and responsibility for on-going maintenance.

3.3 In summary it is proposed that:

- The access road will provide for both pedestrians and cyclists;
- Pedestrian access through vegetated areas and connecting with the roading network will be provided as shown on the concept plan in Appendix 8;
- All sections of the pedestrian accessway are proposed to vest in TDC as “Local Purpose Reserve (access)” under the Reserves Act 1977;
- Where such access traverses SNA062 it is confined to pedestrian access in order to minimise indigenous vegetation loss from the SNA;

- At subdivision design stage, and in consultation with Council staff, consideration will be given to providing for both recreational cycling and pedestrians on other sections (ie outside SNA062) of the Local Purpose Reserve;
- Detailed design (including width of accessways, materials, and other design elements) responding to the location and purpose of the various sections of the accessway will be agreed with TDC staff as part of the subdivision design process;
- A CPTED assessment is required to be undertaken as part of the subdivision design process and included with any application for subdivision consent.

3.4 Appendix 8 also notes that the design and physical works associated with the provision of these public accessways are subject to the approval of TDC prior to vesting. As with all Council owned reserves, future maintenance of reserves vested as a result of the Whareroa North development will become the responsibility of TDC.

3.5 In my view the modifications to Appendix 8 now proposed will provide the degree of certainty that the Reserves evidence is seeking about provision for pedestrians and cyclists proposed in the Whareroa North development.

Maori Reservation

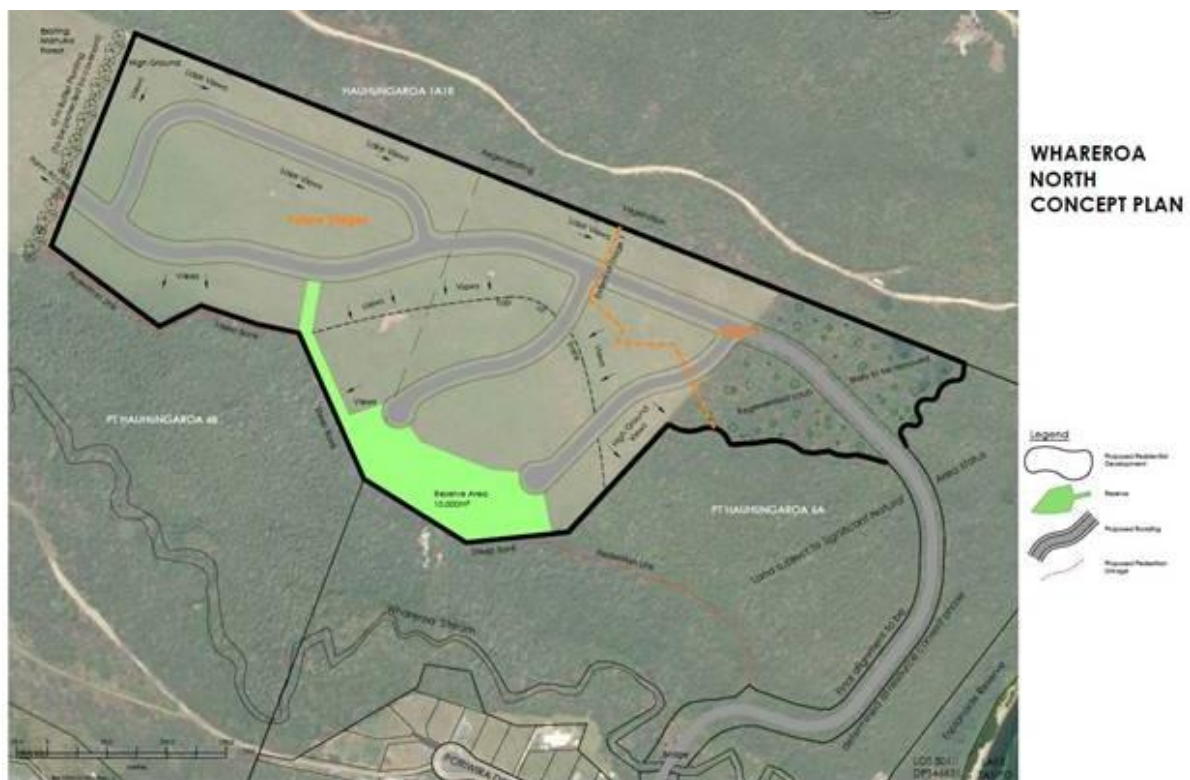
3.6 The Reserves rebuttal evidence is opposed to the lower bowl vegetated area being held as Maori Reservation, having understood it would be a reserve vested in TDC.

3.7 In my view this issue of contention has arisen partly as a result of misunderstanding. Put briefly, the Proponents expectation had always been that this land was required by Council as part of the stormwater management system (and to be vested, therefore, as Local Purpose Reserve by TDC for that purpose). If it is not required for that purpose, the owners preference is that the land be Maori Reservation rather than vested in Council.

3.8 The plan change application lodged in December 2017 included the concept plan below with a “Utility Reserve Area” and including a “stormwater detention” pond shown at the lower bowl location with connections to the cul de sac heads. Additional reserve to the northwest proposed further linkages to the road network. Page 11 of the Infrastructure Report (Appendix 3 of the December 2017 application) explained that the Utility Reserve was a Local Purpose Reserve for stormwater management.



3.9 No recreation reserves were included in the Whareroa North concept plan. Earlier draft concept plans incorporated a 3,000 sq m recreation reserve but following consultation with Mr Mourie that was removed from the concept plans in August 2017.



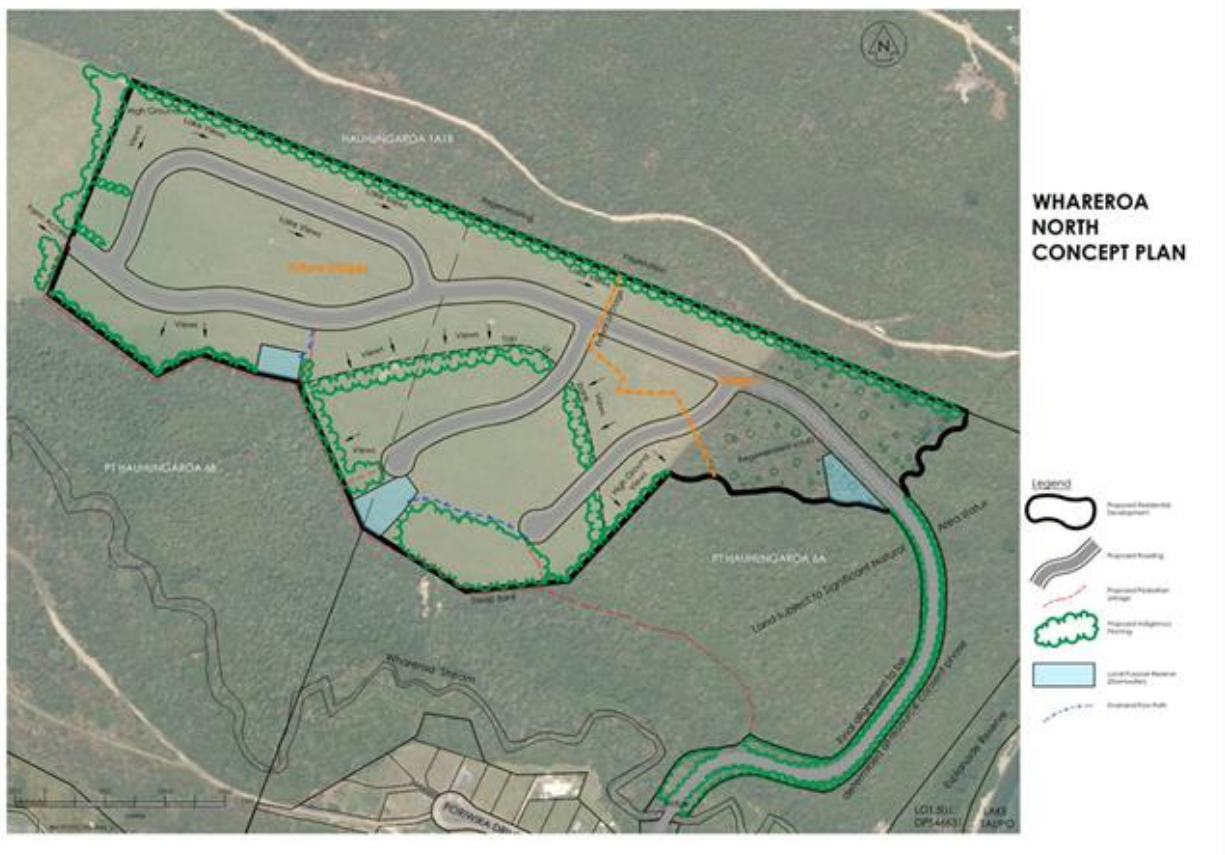
3.10 The notified plan change (October 2019) included the replacement concept plan above which referred to that overall area generally as “Reserve Area”. I note that the rebuttal evidence of Mr

Bonis at paragraph 90 asserts that “vested recreation reserve” was proposed in the notified provisions, but that is not correct. At no time, since the application was lodged, has a recreation reserve been proposed on the plans for Whareroa North.

3.11 The stormwater management proposal and plan included with the notified application showed more detail about the preliminary stormwater design (such as nominal location of three Local Purpose Reserves for ponds and associated stormwater management infrastructure), and noted that the lower bowl area should be vegetated.

3.12 Since that time further understanding of the stormwater management proposal for the site has clarified that (apart from ensuring that the lower bowl area is planted and remains vegetated) this part of the site is not required for stormwater infrastructure.

3.13 Accordingly the concept plan was further revised (as below) and included in the modifications to Appendix 8 in the April 29th evidence for the Proponents. The lower bowl area is shown as “proposed indigenous vegetation” and with pedestrian accessways providing connection.



3.14 My evidence explained, as referred to in Mr Mourie’s rebuttal evidence, that the landowners preference is to vegetate the land and for it to be held and managed, along with the SNA areas

immediately to the south, as Maori Reservation (Conservation). As detailed earlier in this rebuttal, public pedestrian access is proposed through this land as Local Purpose Reserve (access).

3.15 In my view there is not an issue of scope which might otherwise preclude the land being set aside as Maori Reservation (Conservation) rather than Local Purpose Reserve for stormwater purposes. That is because the notified concept plan labelled that area generically as “Reserve” and in this case it is proposed to be a private reserve rather than a reserve owned and managed by a local authority. Most importantly, however, the following “reserve” related outcomes will still be achieved:

- Protected indigenous vegetation;
- Public access provision owned by TDC as Local Purpose Reserve (access).

4 THE EVIDENCE OF MR BONIS

4.1 In this section I respond to the following matters raised in the rebuttal evidence of Mr Bonis:

- Application of the UDS-NPS
- Consideration of slower growth
- Co-ordinating growth and infrastructure
- Whareroa Stream crossing
- Certainty about effects
- Weighting to be given to the SSSP

Application of the UDS

4.2 Mr Bonis asserts that the NPS-UDS applies to the Whareroa North plan change proposal and in particular (at paragraph 14) all of its objectives and policies PA1-PA4. In my view however that cannot be correct because:

- both statements at the beginning of the NPS about its purpose (p9) are tied to “urban environments”, and the “Interpretation” section of the NPS defines “urban environments” as “*an area of land containing or intending to contain, a concentrated settlement of 10,000 people or more...*”;
- In the beginning of the “Objectives” section of the NPS (p10) and applying to all of the objectives listed beneath it is the statement “*The following objectives apply to all decision-makers when making planning decisions that affect urban environments*” (my emphasis);

- In the “Policies” section of the NPS (p12) and immediately before policies PA1 to PA4 is the statement “*Policies PA1 to PA4 apply to any urban environment that is expected to experience growth*” (my emphasis).

4.3 I conclude, therefore, that Whareroa North and environs is not an “urban environment”, and that the objectives and policies PA1 to PA4 of the NPS-UDC do not apply.

Consideration of slower growth

4.4 At paragraph 23 of his rebuttal evidence Mr Bonis refers to an identified slowdown in growth and that the SSSP text “*consistently reinforces the need for the integration of land use development with infrastructure...*”. I agree that the SSSP is concerned with integrating land use and development to support growth. In the 2006 district wide growth management strategy (TD2050) some 9 future growth areas were identified for the southern area. The outcome of the SSSP work was that three only are supported in the SSSP. They are at Omori, Kuratau, and Whareroa.

4.5 As I explain in paragraphs 7.8 to 7.12 of my EiC the development of the SSSP, which was specifically concerned with aligning future growth with infrastructure planning, included considering the efficient use of infrastructure resources in that part of the District. The output of the policy development process was that the SSSP supports Whareroa North as a location for development. It is not correct in my view to suggest that the structure plan then required those same matters (ie integrating growth management and infrastructure efficiency) to be re-addressed. The SSSP at page 49 contains a list of matters expected to be considered in a subsequent plan change (such as landscape, ecological, policies and plans, vegetation, land stability, visual effects etc). It is made clear that the list is not exhaustive, but in my opinion if the expectation was that a plan change reliant on the structure plan (as the TDP prescribes) was to revisit whether or not, from a growth and infrastructure planning perspective, growth at Whareroa is appropriate then I would have expected that to be included on the list and it is not.

4.6 Mr Bonis also references the 2018 TD2050 in his paragraph 23, rather than the 2006 TD2050 document on which the operative regulatory provisions in Section 3e of the TDP are based. A plan change or review (and with appropriate community input) would be required to change the existing TDP provisions if the Council’s intention is to give effect to the 2018 TD2050 document through the District Plan. At this time, however, it is the TD2050 and SSSP which has statutory weight through the Section 3e provisions of the TDP rather than the TD2050 2018 document.

Co-ordinating growth and infrastructure

4.7 At paragraph 31 onwards, Mr Bonis highlights the significance of WRPS Policy 6.3 “Co-ordination growth and infrastructure” and in particular (a) about co-ordinating new development with infrastructure, and (c) about the efficient and effective functioning of infrastructure. Leaving aside disagreement we may have about specific parts of that policy in relation to Whareroa North, I note that the TD2050, SSSP and Section 3e of the TDP together gives effect to that policy which is concerned with ensuring a strategic approach to integrating land use and infrastructure. That view is further confirmed by specific status given to TD2050, and structure plans resulting from it, in WRPS Policy 6.11 “Implementing Taupo District TD2050”.

Whareroa Stream crossing

4.8 I disagree with the opinion of Mr Bonis (paragraph 44) that “*in terms of WRPS Policy 6.3 and TDP Objective 3e.2.3 there is no meaningful provision, or even certainty of implementation in terms of bridge and road crossing*”. Specifically:

- WRPS Policy 6.3(a)(iv), as referenced in Mr Bonis’s para 37, seeks to “.. *ensure new development does not occur until provision for appropriate infrastructure necessary to service the development is in place*” (my emphasis). That policy does not require absolute certainty regarding the bridge/road matter prior to rezoning, and leaves open satisfaction at subdivision consent stage instead. That is, of course, also when the statutory check applies, pursuant to Section 106 of the RMA, that “*sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision*”;
- In the case of TDP Objective 3e.2.3 the only roading/access related policy to give effect to that objective is policy 3e.2.3(iv), “*Avoid, remedy or mitigate the adverse effects of new development and activities on the safe and efficient functioning of the existing and future roading networks including those identified through the Taupō District Structure Plan Process*”. That policy does not appear to me to preclude rezoning of the Whareroa North land ahead of absolute certainty about the bridge/road matter.

4.9 The EIC of Mr McKenzie for the Proponents described the legal mechanism (deed and maori roadway) agreed with the Tuwharetoa Maori Trust Board (TMTB) which is the owner of the land over which the road/bridge will pass. Mr Bonis appears to accept that as a suitable legal mechanism to secure legal public access - “... *I understand that it can provide an alternative access arrangement to a vested legal road*” (paragraph 39).

- 4.10 Mr Keys explains in his rebuttal evidence that the Proponents, TMTB and TDC are engaged in co-operative discussions on the matter. Based on the goodwill of the three parties and the availability of a suitable legal mechanism, I am confident agreement can be reached. In any event, I note that the risk associated with absence of certainty rests with the Proponents, not TDC.
- 4.11 I conclude therefore that although it is always ideal to have certainty about issues associated with a planned development, that is not a prerequisite, or in this case required by the WRC and TDC plan provisions relied upon by Mr Bonis.

Certainty about effects

- 4.12 On pages 9 to 11 of his rebuttal evidence Mr Bonis concludes that the plan provisions proposed do not provide sufficient certainty that potential effects on indigenous biodiversity and landscape values can be appropriately managed.
- 4.13 Based, now, on the rebuttal evidence of ecologist Chris Wedding, and landscape architect Mary Monzingo, and the joint conferencing of the respective experts, further modifications to Appendix 8 of the proposed plan provisions are proposed. Paragraphs 2.6 to 2.8 of this evidence sets out the specific additional modifications in relation to managing biodiversity and landscape related effects.
- 4.14 The Appendix 8 requirements are extensive and detailed. In association with existing (and unchanged) TDP objectives, policies, rules and performance standards relating to natural and landscape values, the outcome in my opinion is an appropriate, effective, and efficient regulatory resource management framework.

Weighting to be given to the SSSP

- 4.15 I agree with Mr Bonis (at paragraph 29) that the SSSP is a management plan which s74(2)(b) of the RMA requires that council “shall have regard to” when changing a district plan (in this case by request). I also agree with Mr Bonis (rather than assert the opposite, as stated) that s74(b) “does not require the SSSP to prevail in terms of weighting as outlined by Ms Lewis”.
- 4.16 In exercising the obligation to “have regard to” the SSSP, it is clearly available to decision-makers to accord the SSSP no weight, considerable weight, or a weighting somewhere along the continuum between the two (provided of course that the weighting accorded does not result in an outcome which is in conflict with other statutory directives).

4.17 In my view Mr Bonis does not accord appropriate weighting to the SSSP as a key component of the growth management framework in Section 3e of the TDP. In my view considerable weight ought to be accorded to the SSSP (in relation to these matters). That is because:

- Structure Plans are an integral component of the TDP (Section 3e) strategic growth management framework which seeks to *“Provide for and manage urban growth so as to achieve the sustainable management of the District’s natural and physical resources”* (TDP 3e.2.1). Further, *“Preparation of structure plans to be incorporated into the District Plan by plan changes is required as the method to provide appropriately for the land development framework and infrastructure necessary for the identified urban growth areas. This is a specific process to realise the development of the Urban Growth Areas.....”* (TDP 3e.1);
- The SSSP is the structure plan (relevant to the Whareroa North plan change request) that the growth management framework in section 3e of the TDP requires is undertaken for the purpose of supporting an associated plan change to rezone land identified as a future growth area (TDP 3e.2.1v);
- In terms of WRPS Policy 6.11(a)(ii) about implementing TD2050, the SSSP is the *“adopted structure plan”* relevant to the Whareroa North plan change request that the policy is concerned with *“ensuring patterns of future urban growth are consistent with”*;
- The SSSP is an operative TDC policy document development of which involved considerable community and stakeholder investment including through consultation and hearing processes. As I expressed in my EiC (below paragraph 9.44) *“landowners need to be able to rely upon Council policy and planning documents....., to provide them with the confidence to make serious investment decisions. The Proprietors of Hauhungaroa No 6 have accepted that policy approach and with the south side of the Whareroa subdivision now complete and all sections sold, they are looking to advance their plans for the north side as signalled in the TDC’s 2013 Structure Plan”*;
- The SSSP specifically invites Plan Change applicants to initiate a private plan change when they consider the market is right.



Joanne Lewis, BRP(Hons), M Phil, MNZPI

5th June 2020

List of Appendices

- 1 Further Modified Plan provisions